

Message Text

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ORIGIN L-03

INFO OCT-01 NEA-10 ISO-00 OC-06 CCO-00 SCS-03 SCA-01 CPR-01
INR-07 /032 R

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R 042148Z MAR 77
FM SECSTATE WASHDC
TO AMEMBASSY NEW DELHI
INFO AMCONSUL BOMBAY
AMCONSUL MADRAS
AMCONSUL CALCUTTA

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E.O. 11652: GDS

TAGS: OGEN, IN, CPAS, CGEN

SUBJECT: PROPOSED US-INDIA CONSULAR CONVENTION

REF: (A) NEW DELHI 494 (B) NEW DELHI 552
(C) NEW DELHI 1720

1. DEPT. HAS PREPARED FULL RESPONSE TO COMMENTS CONTAINED
REFS (A) AND (C) RELATING TO DRAFT TEXT OF CONSULAR CON-
VENTION. THESE COMMENTS, ALONG WITH FINAL INSTRUCTIONS FOR
PROCEEDING WITH NEGOTIATIONS, WILL BE TRANSMITTED AS SOON
AS UPDATED CIRCULAR 175 AUTHORIZATION HAS BEEN ISSUED.
(REQUEST FOR SUCH AUTHORIZATION IS NOW WITHIN THE DEPT. FOR
NECESSARY CLEARANCES.)

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2. BEFORE ISSUING FINAL INSTRUCTIONS, DEPT. WOULD LIKE TO
COMMENT ON ISSUE RAISED REF (B) RELATING TO LANGUAGE OF
DRAFT ARTICLE 13 ON COMMUNICATIONS FACILITIES, SPECIFICALLY
THE USE OF A WIRELESS TRANSMITTER. L AND A/OC-N CAREFULLY

CONSIDERED VIEWS OF EMB. RELATING TO POSSIBLE EFFECT OF
SUCH LANGUAGE ON EXISTING RADIO FACILITIES, BUT HAS CON-

CLUDED THAT SUGGESTED LANGUAGE IS DESIRABLE FOR THE FOLLOWING REASONS:

(1) IF THE ARTICLE AUTHORIZED THE USE OF WIRELESS TRANSMITTERS WITHOUT THE NECESSITY OF RECEIVING PRIOR APPROVAL FROM THE RECEIVING STATE, THE U.S. WOULD BE PLACED IN A VERY DIFFICULT POSITION VIS-A-VIS FEDERAL LAW ON THIS MATTER. SPECIFICALLY, 47 U.S. CODE SECTION 305 REQUIRES EXECUTIVE BRANCH PERMISSION BEFORE A FOREIGN GOVERNMENT MAY INSTALL A WIRELESS TRANSMITTER IN THE U.S. IF BECAUSE OF THE SILENCE OF CONSULAR CONVENTION ON THIS SUBJECT AND THE FACT OF U.S. USE OF A WIRELESS TRANSMITTER IN INDIA THE INDIANS WERE TO INSTALL A WIRELESS TRANSMITTER WITHOUT COMPLIANCE WITH U.S. STANDARDS, THE U.S. GOVERNMENT WOULD BE HARD PRESSED TO TAKE STEPS TO SUPERVISE SUCH OPERATIONS.

(2) OMISSION OF THE LANGUAGE WHICH THE EMB. FINDS TROUBLESOME FROM THIS CONSULAR CONVENTION WOULD CREATE AN UNDESIRABLE PRECEDENT FOR FUTURE BILATERAL NEGOTIATIONS OF THIS KIND.

(3) IF THE INDIANS WERE TO RAISE THIS ISSUE AFTER THE CONCLUSION OF THE CONSULAR CONVENTION, THE U.S. WOULD BE ON VERY STRONG GROUND IN MAINTAINING THAT IN FACT THE GOI HAD GIVEN PERMISSION TO THE USG TO UTILIZE THIS PARTICULAR FORM OF COMMUNICATION.

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(4) WHETHER OR NOT THERE IS A SPECIFIC MENTION OF PROCEDURES UNDER WHICH WIRELESS TRANSMITTERS CAN BE INSTALLED, THE INDIANS ARE IN A POSITION TO CHALLENGE USG USE OF SUCH FACILITIES, NOTWITHSTANDING PAST PRACTICE.

3. BASED UPON THE ABOVE, L AND A/OC-N HAVE CONCLUDED THAT THE SAFEST APPROACH IS THAT ORIGINALLY SUGGESTED.

NEA IS RESERVING JUDGMENT ON THE ISSUE UNTIL THE EMBASSY HAS AN OPPORTUNITY TO OFFER ANY DIFFERING VIEWS WHICH IT FEELS SHOULD BE CONSIDERED BEFORE DECISION IS REACHED.

PLEASE ADVISE.

CHRISTOPHER

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